

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

HARRIS CLAIBORNE FRAZIER

BANKRUPTCY PROCEEDING

CASE NUMBER: 08-03051 EE

AUSTIN W. FRAZIER

CASE NUMBER: 08-04026 EE

**ORDER GRANTING MOTION FOR AUTHORITY TO SELL ASSETS FREE AND
CLEAR OF LIENS, INTERESTS, ENCUMBRANCES AND CLAIMS AND RELEASE**

THIS MATTER COMES before the Court upon Motion for Authority to Sell Assets Free and Clear of Liens, Interests, Encumbrances and Claims and Release filed by Derek A. Henderson, Trustee in the case of Harris Claiborne Frazier (Case No. 08-03051) and in the case of Austin W. Frazier (Case No. 08-04026). The Motions and Responses filed in the cases are as follows:

Harris Claiborne Frazier (Case No. 08-03051)

- a) Trustee's Motion for Authority to Sell Assets Free and Clear of Liens, Interests, Encumbrances and Claims and Release (Docket No. 173); and
- b) Response of Club Woodlands, LLC and Carroll McLeod (Docket No. 178).

Austin W. Frazier (Case No. 08-04026)

- a) Trustee's Motion for Authority to Sell Assets Free and Clear of Liens, Interests, Encumbrances and Claims and Release (Docket No. 102); and
- b) Response of Club Woodlands, LLC and Carroll McLeod (Docket No. 104).

After reviewing the facts and considering the same, the Court finds that the Trustee's Motion is well taken subject to the terms and conditions of this Order. The Court finds as follows:

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §157 and 28 U.S.C. §1334.

This matter is a core proceeding.

2.

On October 8, 2008, Harris Claiborne Frazier filed his petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Mississippi. The case was dismissed and reinstated on January 30, 2009. Derek A. Henderson was appointed the Chapter 7 Trustee.

3.

On December 31, 2008, Austin W. Frazier filed his petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Mississippi. Derek A. Henderson was appointed the Chapter 7 Trustee.

4.

At the time of the filing of the bankruptcy petitions, both Harris Claiborne Frazier (“Claiborne”) and Austin W. Frazier (“Austin”) each owned or held a claim or interest in Six Shooter Lodge, LLC, a Mississippi limited liability company and Six Shooter Land & Timber Company, LLC, a Mississippi limited liability company.

Sale of Interest in Six Shooter Lodge, LLC

5.

Six Shooter Lodge, LLC is a Mississippi limited liability company. The members of Six Shooter Lodge, LLC are Shelby Brantley, Steve Davidson, Jason Young, Carroll McLeod, Claiborne Frazier and Austin Frazier. This limited liability company was formed May 21, 2002. The members

did not enter into a Limited Liability Company Agreement or Operating Agreement. Accordingly, the operation of this limited liability company and the rights and obligations of its members, are controlled by the Mississippi Limited Liability Company Act found at M.C.A. § 79-29-101, et seq.

See M.C.A. § 79-29-306.

6.

Six Shooter Lodge, LLC owns a 17,000 square foot building which serves as a hunting lodge on four acres of land located approximately five miles outside of Drew, Mississippi. Six Shooter Lodge, LLC does not own any hunting land. The above mentioned property owned by Six Shooter Lodge, LLC has been appraised at One Million Five Hundred Thousand Dollars (\$1,500,000.00) and has an outstanding debt of approximately Nine Hundred Thousand Dollars (\$900,000.00). The outstanding debt is secured by a Deed of Trust on the property in favor of BancorpSouth. Each year, the members of Six Shooter Lodge, LLC make, or are supposed to make, capital contributions to fund the debt service, maintenance, upkeep and utilities in connection with the property. Annual capital contributions have ranged from Two Hundred Sixty Thousand Dollars (\$260,000.00) to Three Hundred Thousand Dollars (\$300,000.00). It is anticipated that future capital contributions will be consistent with prior years. Six Shooter Lodge, LLC does not engage in any business activity and has no profits, only losses. Most members have been faithful about making their capital contributions. However, Claiborne Frazier and Austin Frazier have not made capital contributions since late 2006.

7.

M.C.A. § 79-29-701 describes the property rights of a limited liability company member and provides as follows:

A limited liability company interest is personal property. A member has no interest in specific limited liability company property. (Emphasis added)

Accordingly, the only thing that the Trustee has acquired in connection with Six Shooter Lodge, LLC is the Debtors' interest in the same, not any property owned by Six Shooter Lodge, LLC.

M.C.A. § 79-29-702 governs the assignment of a limited liability company interest and provides as follows:

An assignment of a limited liability company interest does not dissolve a limited liability company or entitle the assignee to become or to exercise any rights of a member. An assignment entitles the assignee, to the extent assigned, to share in such profits and losses, to receive such distribution or distributions, and to receive such allocations of income, gain, loss, deduction, credit or similar items to which the assignor would have been entitled. Except as provided in the certificate of formation or limited liability company agreement, a member ceases to be a member upon assignment of the member's entire limited liability company interest.

M.C.A. § 79-29-704 which addresses the right of an assignee to become a member of a limited liability company, provides as follows:

- (1) An assignee of a limited liability company interest may become a member if, and to the extent that (a) the certificate of formation or limited liability company agreement so provides or (b) all other members consent.

8.

The Certificate of Formation for Six Shooter Lodge, LLC does not contain any provision allowing an assignee to become a member. The members of Six Shooter Lodge, LLC did not enter into a Limited Liability Company Agreement or Operating Agreement. Accordingly, the only way an assignee of a limited liability company interest in Six Shooter Lodge, LLC can become a member of such limited liability company is if all other members consent. The remaining members do not consent to the addition of any new members in Six Shooter Lodge, LLC.

9.

Considering the above, the most that anyone (other than the remaining members of Six Shooter Lodge, LLC) could hope to gain by receiving an assignment of the Fraziers' interest in Six Shooter Lodge, LLC is an economic interest in the same. In other words, any purchaser or assignee of their interest will have no rights of membership in Six Shooter Lodge, LLC (i.e. no right to use, sell or do anything with the property owned by Six Shooter Lodge, LLC). The only rights that a purchaser or assignee of the Fraziers' interest in Six Shooter Lodge, LLC would have is the right to share in the profits and losses of the company. There are no profits, only losses. Therefore, a purchaser or assignee could only expect to incur losses in connection with his or her interest in Six Shooter Lodge, LLC. Ralph G. Ross, CPA, CVA has prepared a Valuation Opinion in which he has opined that the fair market value of the Debtors' interest in Six Shooter Lodge, LLC is zero dollars (\$0).

10.

Shelby Brantley, Steve Davidson, Jason Young and Carroll McLeod, offer to purchase, free and clear of any and all liens and encumbrances, the limited liability company membership interest of Claiborne Frazier in Six Shooter Lodge, LLC for Six Thousand Five Hundred Dollars (\$6,500.00). Shelby Brantley, Steve Davidson, Jason Young and Carroll McLeod also offer to purchase, free and clear of any and all liens and encumbrances, the limited liability company membership interest of Austin Frazier in Six Shooter Lodge, LLC for Six Thousand Five Hundred Dollars (\$6,500.00).

11.

On September 7, 2010, the Trustee filed his Motion for Authority to Sell Assets Free and Clear of Liens, Interests, Encumbrances and Claims and Release in both the cases of Harris

Claiborne Frazier and Austin W. Frazier. After notice to creditors and parties-in-interest, the following responses were filed:

Harris Claiborne Frazier (Case No. 08-03051)

- a) Response of Club Woodlands, LLC and Carroll McLeod (Docket No. 178).

The Response does not oppose the Motion but clarifies certain facts stated therein.

Austin W. Frazier (Case No. 08-04026).

- a) Response of Club Woodlands, LLC and Carroll McLeod (Docket No. 104).

The Response does not oppose the Motion but clarifies certain facts stated therein.

12.

The Trustee requests the Court to approve the sale of the Harris Claiborne Frazier estate's interest in Six Shooter Lodge, LLC for \$6,500.00 and the sale of the Austin W. Frazier estate's interest in Six Shooter Lodge, LLC for \$6,500.00.

13.

The Trustee requests the Court to approve the sale of the interest in Six Shooter Lodge, LLC free and clear of all liens, interests, encumbrances and claims pursuant to 11 U.S.C. §363.

14.

The Trustee requests the Court to find and determine that the purchasers being Shelby Brantley, Steve Davidson, Jason Young and Carroll McLeod are good faith purchasers pursuant to 11 U.S.C. §363(m) of the United States Bankruptcy Code.

15.

The Trustee requests the Court to authorize a sale of Harris Claiborne Frazier's interest and Austin W. Frazier's interest in Six Shooter Lodge, LLC to Shelby Brantley, Steve Davidson, Jason Young and Carroll McLeod or their assignees. The Trustee requests the Court to approve the sale free and clear of liens, interests, encumbrances and claims. The Trustee further requests the Court to authorize the Trustee to execute the documentation required to consummate the sale.

Release of Six Shooter Land & Timber Company, LLC

16.

Six Shooter Land & timber Company, LLC is a Mississippi limited liability company. The members of Six Shooter Land & Timber Company, LLC are Shelby Brantley, Carroll McLeod, Stephen Davidson, John Davidson and Jason Young. Claiborne Frazier and Austin Frazier were previous members.

17.

The members of Six Shooter Land & Timber Company, LLC entered into an Operating Agreement on September 4, 1996 and amended the same on January 1, 2002.

Section 9.1 of the Operating Agreement provides as follows:

Section 9.1 Restriction on Assignment. No Member shall have the right to sell, assign, pledge hypothecate, transfer, exchange, gift, bequeath or otherwise transfer (by voluntary or involuntary means) all or any part of his Limited Liability Company Interest without the written consent of a majority of the Members, which consent may be withheld by a Member and his sole and unrestricted discretion.

In addition to the above, Section 9.3 of the Operating Agreement provides as follows:

Section 9.3 Assignee Not Member in Absence of Consent. Notwithstanding any provision contained in this Operating Agreement to the contrary,

unless all the remaining Members grant their written consent to any assignment of Limited Liability Company Interest to any assignee who is not a Member immediately before the assignment, the proposed assignee shall have no right to participate in the management of the business and affairs of the Company or to become or exercise any right of a member. An assignee shall merely be entitled, to the extent assigned, to share in the Net Profits and Net Losses and to receive such distributions to which the assignor would have been entitled.

18.

Almost four (4) years ago Claiborne Frazier assigned, for valuable consideration, all of his right, title and interest in and to Six Shooter Land & Timber Company, LLC to Club Woodlands, LLC. Also, almost four (4) years ago Austin Frazier assigned, for valuable consideration, all of his right, title and interest in and to Six Shooter Land & Timber Company, LLC to Carroll McLeod.

19.

If the assignments could be set aside, the most that anyone (other than members of Six Shooter Land & Timber Company, LLC) could hope to gain by receiving an assignment of the Fraziers' claimed interest in Six Shooter Land & Timber Company, LLC is an economic interest in the same. In other words, if the assignments could be set aside, any purchaser or assignee of the Fraziers' interest would have no rights of membership in Six Shooter Land & Timber Company, LLC (i.e. no right to use, sell or do anything with the property owned by Six Shooter Land & Timber Company, LLC). The only rights that a purchaser or assignee of the Fraziers' interest in Six Shooter Land & Timber Company, LLC would have is the right to share in the profits and losses of the company. Six Shooter Land & Timber Company, LLC is a hunting club. It has no profits, only losses. Therefore, a purchaser or assignee could only expect to incur losses in connection with his or her interest in Six Shooter Land & Timber Company, LLC.

20.

Shelby Brantley and Steve Davidson, by and through a company owned by them, the same being Club Woodlands, LLC offer to pay the bankruptcy estate of Claiborne Frazier One Thousand Dollars (\$1,000.00) for the release of any claimed interest in Six Shooter Land & Timber Company, LLC. Carroll McLeod offers to pay the bankruptcy estate of Austin Frazier One Thousand Dollars (\$1,000.00) for the release of any claimed interest in Six Shooter Land & Timber Company, LLC. The offers are fair and reasonable in that almost four (4) years ago Claiborne Frazier assigned, for valuable consideration, all of his right, title and interest in and to Six Shooter Land & Timber Company, LLC to Club Woodlands, LLC. Also, almost four (4) years ago Austin Frazier assigned, for valuable consideration, all of his right, title and interest in and to Six Shooter Land & Timber Company, LLC to Carroll McLeod. The offers are for a release of any interest claimed by the Debtors or the bankruptcy estates and not for a purchase of such interest. This is because the offerors have already purchased, for valuable consideration, and received assignments of the Debtors' membership interest in Six Shooter Land & Timber Company, LLC. Due to the restrictions of the LLC, even if these assignments could be set aside, the fair market value of the Fraziers' claimed interest in Six Shooter Land & Timber Company, LLC would be zero dollars (\$0).

21.

The Trustee requests the Court to approve and authorize a release of the Harris Claiborne Frazier estate's interest in Six Shooter Land & Timber Company, LLC for \$1,000.00 and to approve and authorize a release of the Austin W. Frazier estate's interest in Six Shooter Land & Timber Company, LLC for \$1,000.00.

22.

The Trustee requests the Court to authorize the Trustee to execute the appropriate release and documentation required to consummate the release.

THEREFORE, IT IS ORDERED that the Trustee's Motion for Authority to Sell Assets Free and Clear of Liens, Interest, Encumbrances and Claims and Release is well taken and is hereby granted. The Response filed by Club Woodlands, LLLC and Carroll McLeod has been considered and is moot. The Trustee is authorized to sell free and clear of liens, interests, encumbrances and claims the limited liability company membership interest of Claiborne Frazier in Six Shooter Lodge, LLC for Six Thousand Five Hundred Dollars (\$6,500.00). The Trustee is authorized to sell free and clear of liens, interests, encumbrances and claims the limited liability company membership interest of Austin Frazier in Six Shooter Lodge, LLC for Six Thousand Five Hundred Dollars (\$6,500.00). The Trustee is authorized to sell both the Harris Claiborne Frazier and Austin W. Frazier interest in Six Shooter Lodge, LLC to the other members of the LLC being Shelby K. Brantley, Steve Davidson, Jason Young and Carroll McLeod or their assignees for the total purchase price of \$13,000.00. The Harris Claiborne Frazier estate shall receive \$6,500.00 and the Austin W. Frazier estate shall receive \$6,500.00. The interest shall be sold "As Is, Where Is" with no warranty whatsoever.

IT IS FURTHER ORDERED that the purchasers being Shelby Brantley, Steve Davidson, Jason Young and Carroll McLeod or their assignees are good faith purchasers pursuant to 11 U.S.C. §363(m) of the United States Bankruptcy Code.

IT IS FURTHER ORDERED that as to the Harris Claiborne Frazier interest in Six Shooter Lodge, LLC, any lien claims shall attach to the sales proceeds to the same priority, extent and

validity as prior to the sale. To the extent any creditor has a valid lien against the sales proceeds, said lien shall attach to the sales proceeds to the same priority, extent and validity. This Order is not and shall be an adjudication of any lien claims. All potential lien holders and the Trustee each reserve their rights, claims and defenses.

IT IS FURTHER ORDERED that as to the Austin W. Frazier interest in Six Shooter Lodge, LLC, any lien claims shall attach to the sales proceeds to the same priority, extent and validity as prior to the sale. To the extent any creditor has a valid lien against the sales proceeds, said lien shall attach to the sales proceeds to the same priority, extent and validity. This Order is not and shall be an adjudication of any lien claims. All potential lien holders and the Trustee each reserve their rights, claims and defenses.

IT IS FURTHER ORDERED that the Trustee is authorized to execute a release of the Harris Claiborne Frazier estate's interest in Six Shooter Land & Timber Company, LLC to Club Woodlands, LLC for \$1,000.00 and authorized to execute a release of the Austin W. Frazier estate's interest in Six Shooter Land & Timber Company, LLC to Carroll McLeod for \$1,000.00.

IT IS FURTHER ORDERED that the Trustee is authorized to execute the appropriate documentation required to consummate the sale and release.

IT IS FURTHER ORDERED that a separate final judgment shall be entered.

SO ORDERED.



Edward Ellington
United States Bankruptcy Judge
Dated: October 5, 2010

Approved by:



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